IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3759 OF 2006

The President/ Secretary
Rayat Shikshan Sanstha
Statara & anr. ..Petitioners.

Vs.

The State of Maharashtra & Ors. ..Respondents.

...

Mr. Umesh Mankapure for the Petitioners.
Ms. Vaidehi Mhaispurkar, AGP for the State.
Mr. Sanjeev Kadam for Respondent No.2.

....

CORAM: DR. D.Y. CHANDRACHUD, J.

19th June, 2006.

P.C. :

1. The services of the Second Respondent who was appointed as a full time lecturer in R. B. M. B. College, Shrirampur were terminated by the management on the ground that he passed the SET examination in February 2002 and this would not relate back to the date of appointment of the Second Respondent. The order of termination was upheld by the University and College Tribunal in the first instance on 7th January, 2004. The order of the Tribunal was challenged in writ proceedings before this Court by the Second Respondent and on 8th July, 2005 a learned Single

Judge of this Court (S. A. Bobde, J.) held that the order of the Tribunal suffered from an obvious error apparent from the face of the record. This Court noted that the appointment of the Second Respondent herein was made subject to his passing the NET or SET examination. Consequently, the subsequent passing of the examination need not relate back to the date of original appointment. This Court was prima facie of the view that the order of the Tribunal was not in accordance with the judgment of the Court in **Vishwaprakash v. State of Maharashtra**[1] In the circumstances, the matter was remitted back to the Tribunal for a fresh decision subject to the clarification that all the other contentions of the parties, save and except that which was decided by this Court in the order dated 8th July, 2005 will be open for consideration.

2. When the matter went back before the Tribunal, the Tribunal recorded in its judgment dated 28th October, 2005 that there was no other point involved in the appeal, save and except what was decided by the High Court. In fact counsel appearing for the management stated before the Tribunal that the management

1 2003(2) Mh. L. J. 176.

was ready to continue the Second Respondent herein since he had already passed the SET examination but the Joint Director of Higher Education had not permitted the management to do so. The further submission was that the Joint Director should be directed to grant approval for the payment of salary to the Second Respondent towards back wages. The Tribunal in response to this submission held that it was the duty of the management to pay the salary and allowances but that in the event that the management submits a proposal to the Joint Director of Higher Education for the release of the grant made for the purpose, such a request should be duly considered in accordance with law.

3. The management has not challenged the judgment and order of the Learned Single Judge dated 8th July, 2005. The matter was remitted back to the Tribunal only to decide the related issues which arose in the appeal. Before the Tribunal it would appear that no other issue was urged. It would be apparent from the tenor of the order that the management was in fact ready and willing to continue the lecturer involved in these proceedings since he had passed the SET examination. Having regard to the undisputed facts, the order passed by the Tribunal does not warrant any

interference. The Tribunal has permitted the management to apply to the Joint Director of Higher Education for the release of the grant-in-aid with a direction that such a request shall be considered. The aforesaid direction of the Tribunal is only just and proper. There is no merit in the Petition which is accordingly dismissed. However, counsel appearing for the Second Respondent fairly states that subject to the management reinstating forthwith the Second Respondent, he shall not press the management for the release of the back wages until the request is disposed of by the Joint Director of Higher Education. In the circumstances, counsel appearing for the management states that a proposal shall be submitted to the Joint Director of Higher Education within a period of one week from today. The Joint Director of Higher Education to consider the request in terms of the directions of the Tribunal and pass appropriate orders in accordance with law within a period of eight weeks thereafter.